TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 220. 125.

JOHN McQUADE, PLAINTIFF IN ERROR,

vs.

THE INHABITANTS OF THE CITY OF TRENTON.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

FILED JUNE 17, 1897.

(16,612.)

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(16,612.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 399.

JOHN McQUADE, PLAINTIFF IN ERROR,

vs.

THE INHABITANTS OF THE CITY OF TRENTON.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 29, 1897.

a Supreme Court of the United States.

In the Matter of the Petition of JOHN MCQUADE for a Writ of Error to the New Jersey Court of Errors and Appeals.

The petition of John McQuade respectfully shows that on or about the 21st day of November, 1895, in a cause wherein The Inhabitants of the City of Trenton were complainants and respondents, and the said John McQuade was defendant and appellant, the New Jersey court of errors and appeals, being the highest court of law and equity of the State of New Jersey in which a decision could be had in said cause, made and filed a decree and remittitur in favor of the said The Inhabitants of the City of Trenton and against the petitioner, in which, as well as in the proceedings had prior thereto, and the record in said cause, certain errors have happened to the prejudice of your petitioner, all of which will more fully and at large appear from the assignment of errors filed herewith.

Wherefore, petitioner prays that a writ of error be issued
b from this honorable court in petitioner's behalf to the said New Jersey court of errors and appeals for the correction of the errors so complained of, and that a transcript of the record proceedings and papers in the said cause, duly authenticated, may be sent to this court.

And your petitioner will ever pray, etc.

DAVID McCLURE,
Attorney for Petitioner, 22 William Street, New York.

c Supreme Court of the United States.

In the Matter of the Petition of JOHN MCQUADE for a Writ of Error to the New Jersey Court of Errors and Appeals.

Assignment of Errors.

Now comes the said John McQuade by David McClure, his attorney, and in connection with his petition filed herein praying for a writ of error to the New Jersey court of errors and appeals, to correct the errors made by said court in a certain cause wherein The Inhabitants of the City of Trenton were complainants and respondents, and the said John McQuade was defendant and appellant, avers that in the record of proceedings in said cause and in the decree and remittitur made and filed in said cause by the said New Jersey court of errors and appeals on or about the 21st day of November, 1895, there is manifest error, to wit:

I.

That the said New Jersey court of errors and appeals erred by affirming in said decree and remittitur the decree of the court of chancery made in said cause on or about the 9th day of April, 1895,

whereby it was adjudged that the said John McQuade be
d perpetually enjoined and restrained not only from further interfering with the laying and completion of the sidewalk and curbing mentioned in the bill of complaint in said cause, but also from in any manner removing, disturbing or interfering with the said pavement, sidewalk or curbing after the same should have been completed, and that a writ of injunction issue accordingly.

II.

That the said decree and remittitur is erroneous because by it the complainants and respondents in said cause are permitted to take the private property of the said John McQuade for public use without just compensation as required to be made under the provisions of the Constitution of the United States and the amendments thereto.

III.

That the said decree and remittitur is erroneous because by it the Pennsylvania Railroad Company is permitted to take and injure the private property of the said John McQuade without just compensation as required to be made under the provisions of the Constitution of the United States and the amendments thereto.

IV.

That the said decree and remittitur is erroneous because through it the property of the said John McQuade is damaged without just compensation made for such damage to the said John McQuade.

e V.

That said decree and remittitur is erroneous because, by it, the right to take or injure the said John McQuade's property in the manner set forth in the pleadings and proofs in the said cause had not been acquired either by the said complainants and respondents or by the Pennsylvania Railroad Company by the exercise of the power of eminent domain or otherwise.

VI.

That the said court of errors and appeals erred in making the said decision and decree and remittitur because no procedure for taking or injuring private property in the manner shown in the pleadings and proofs in said cause has been at any time prescribed or enacted by the legislature of the State of New Jersey.

VII.

That the said court of errors and appeals erred in making the said decision and decree and remittitur because the record in said cause shows that the said John McQuade's property has been taken for public use without just compensation first made to him.

VIII.

That the said decree and remittitur is erroneous because by it the said John McQuade is deprived of his property without due process of law, in violation of the fourteenth amendment of the Constitution of the United States.

f IX.

That the said decree and remittitur of the said court of errors and appeals is erroneous because it is in sundry other respects contrary to the Constitution of the United States and the law of the land.

Wherefore, the said John McQuade prays that the decision and decree and remittitur of the said New Jersey court of errors and appeals be vacated, and that such other relief be granted to the said John McQuade as may be necessary and proper.

DAVID McCLURE,
Attorney for John McQuade, 22 William Street, New York.

g UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of errors and appeals of the State of New Jersey, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of errors and appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between John McQuade, appellant, and The Inhabitants of the City of Trenton, respondents, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution
h or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have

the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 22d day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

i The answer of the judges of the court of errors and appeals in the last resort in all causes in the State of New Jersey, within named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States in a certain schedule to this writ annexed as within commanded.

ALEX. T. McGILL,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in all Causes in New Jersey.

1 New Jersey Court of Errors and Appeals.

JOHN MCQUADE, Appellant,
and
THE INHABITANTS OF THE CITY OF TRENTON, Respondents. } On Appeal.

Bill for Injunction.

(Filed March 15, 1894.)

In Chancery of New Jersey.

THE INHABITANTS OF THE CITY OF TRENTON,
Complainants,
and
JOHN MCQUADE, Defendant. } On Bill for Injunction.

To his honor Alexander T. McGill, chancellor of the State of New Jersey:

Humbly complaining shows unto your honor, your orators, The Inhabitants of the City of Trenton, a municipal corporation existing under and by virtue of an act of the legislature of New
2 Jersey entitled "An act to provide for the more efficient government of the city of Trenton," approved March 19th, 1874, and the several supplements thereto and the acts amendatory thereof.

And your orators further show, that in pursuance of the power and authority vested in it under and by virtue of the act of the legislature aforesaid, the common council of the city of Trenton did, on or *the about* seventeenth day of February, eighteen hundred and ninety-one, finally pass an ordinance entitled "An ordinance to change the grade of a portion of Lamberton and Ferry streets, and to widen Bridge street, between Union and Warren streets, also to vacate a portion of Bridge street," in the city of Trenton, and which said ordinance was duly approved by his honor, the mayor of said city, on February twenty-first, eighteen hundred and ninety-one.

That said ordinance was introduced in said common council at a regular meeting prior to the meeting at which it was finally passed, and was read three times before its final passage, and was passed at a subsequent regular meeting to that at which it was introduced, and after its passage as aforesaid, was published for five days in two or more of the daily newspapers printed and published in the city of Trenton before the same took effect.

And your orators further show, that the change of grade on said portions of said streets aforesaid was made and said ordinance passed at the special instance and request, and by the procurement of the Pennsylvania Railroad Company, upon the express proviso that the said railroad company should, at its own expense, lay out, grade, curb, pave and dedicate a new street, thirty feet wide, between Warren and Fair streets, and should widen Bridge street, between Union and Warren streets, and should dedicate the part so widened to the city of Trenton, and should provide means to carry off all the surface water whose then present course would be diverted or changed by the aforesaid alterations and changes in said streets, and that said railroad company should file with the city solicitor a satisfactory agreement with the Inhabitants of the City of Trenton that they would furnish and pay for the labor and materials neces-
3 sary to make said alterations, and indemnify the said The Inhabitants of the City of Trenton against any expense or losses which might be incurred as damages to property affected, or otherwise, by the said changes of grade, and said vacation of portions of said street, and should, within thirty days after the passage of said ordinance, file a satisfactory bond with the city solicitor for the faithful performance of said agreement before mentioned, and that said ordinance should not go into effect until the said bond was filed and the expense of the passage of said ordinance paid; all which will more fully and at large appear by the said ordinance or from the certified copy thereof hereunto annexed and hereby made a part hereof.

And your orators further show, that the said Pennsylvania Railroad Company, at the time of the changes of grade and alteration of said streets as aforesaid, did pay the expense thereof, and did dedicate a new street between Warren and Fair streets, and did widen Bridge street, between Union and Warren streets, and did dedicate the part so widened to the city of Trenton, and did provide means to carry off all surface water whose then present course was diverted or changed by the aforesaid alterations and changes in

said streets, and did file with the city solicitor a satisfactory agreement with the Inhabitants of the City of Trenton that they would furnish and pay for the labor and materials necessary to make said alterations, and indemnify the said city against any losses or expense which might be incurred as damages to property affected, or otherwise, by the said changes of grades and alterations in said streets, and did, within thirty days after the passage of said ordinance, file a satisfactory bond with the city solicitor for the faithful performance of said agreement aforesaid, and before said ordinance went into effect, did pay the expense of the passage thereof, including the printing and publication thereof, and did perform all and singular the things precedent on said company's part to be done before said ordinance went into full force and effect, before the happenings, actings and doings of the said defendant as hereinafter set forth.

4 And your orators further show, that one John McQuade owns and occupies a house and lot of land on the northerly side of Ferry street, in said city of Trenton, which said premises of said John McQuade are on that portion of said Ferry street the grade of which was changed by virtue of the ordinance aforesaid.

And your orators further show, that on or about the seventeenth day of June, in the year eighteen hundred and ninety-two, and after the grade of said Ferry street had been changed, pursuant to the aforesaid ordinance, and after means had been provided for carrying off all surface water whose then present course was diverted or changed by the aforesaid alterations in said streets, Joseph R. Gilkyson, agent of the Pennsylvania Railroad Company, in said city of Trenton, was given authority and permission by John M. Rulon, street commissioner of said city of Trenton, to relay and reset the curb, gutter and pavement in front of the aforesaid property of said John McQuade, on said northerly side of Ferry street, and that on or about the said last-mentioned day, the said Joseph R. Gilkyson, by his workmen, servants and employees, did reset and relay the curb and pavement and gutter in front of the property of the said John McQuade aforesaid; and that while the said Joseph R. Gilkyson, his servants, workmen and agents were so employed in changing the grade of the said sidewalk, relaying the said pavement thereon and resetting the said curb-line and gutter thereof, the said John McQuade interfered with the said workmen, by not only notifying the said workmen engaged in the said work aforesaid, and warning them to absolutely desist and refrain from changing the grade of said sidewalk, relaying said pavement and resetting the said curb and gutter, but also endeavored forcibly to interfere with and obstruct *with* said work, and while the said work was progressing the said John McQuade, from the second-story windows of the house on the lot of land in front of which said grade was being changed, and said pavement, curb and gutter being relaid and reset, threw hot and cold water on the men so engaged

5 in the work aforesaid, himself, and had several other persons throwing water on the men out of the second-story windows aforesaid; that the said work occupied the space of about two hours,

and that during all that time the said McQuade interfered with and tried to prevent the said work in the manner aforesaid; and that in order to prosecute the said work, and in a measure to prevent said men so at work being deluged with water from said McQuade and his abettors, the workmen so engaged spread a large canvass over their heads in front of the property of the said McQuade and maintained the same during all the time that said work progressed.

And your orators further show, that the said work of relaying the pavement and resetting the curb-line and gutter thereof, in front of said property of the said John McQuade, was done under and by virtue of the authority of the street commissioner of the city of Trenton, acting under and by virtue of the ordinance hereinbefore particularly mentioned, and a copy of which said ordinance is hereunto annexed and hereby made a part hereof.

And your orator further shows, that after the relaying of the pavement in front of said property of said McQuade, and the resetting of the curb and gutter in front thereof, and on or about the — day of June, eighteen hundred and ninety-two, the said John McQuade did willfully and deliberately tear up the pavement so as aforesaid laid in front of his said premises, and disturbed, barred out and upset the curb and gutter so as aforesaid laid in front of his said premises on Ferry street, and that the said pavement in front of the said McQuade's premises has remained, and still remains, torn up and disturbed, and the street in front of said premises is uneven, holds water in times of rainfall, and is rendered well-nigh impassible for pedestrains by reason of its condition aforesaid, the said McQuade having dug a hole three or four feet square in the sidewalk in front of his said premises which he keeps filled with water when the same is not filled by the fall of rain; that the said John McQuade has informed the street commissioner of the city of Trenton and many other people that he disturbed and tore up said pavement
6 aforesaid and broke down the curb-line thereof, and that he will not permit the said pavement to be relaid, and that if it should be relaid he will tear it up again and as often as it is relaid and as fast as it is relaid.

All which actings and doings of said John McQuade are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orators.

In tender consideration whereof, and forasmuch as your orators are without remedy at and by the strict rules of the common law, and can only obtain relief in this honorable court, where matters of this nature are particularly cognizable and relievable:

To the end therefore that the said John McQuade may answer this bill, but without oath, and particularly that he may set forth and discover whether or not he did willfully and deliberately tear up the pavement so as aforesaid laid in front of his said premises, and disturb, bar out and upset the curb and the gutter so laid in front of his said premises on Ferry street; and that by the order and decree of this honorable court the said John McQuade may be perpetually enjoined and restrained from in any manner interfering with, hindering or obstructing the laying of said pavement and the

resetting of said curb and gutter in front of said premises by your orators and those acting for them in the premises; and from tearing up, barring out or otherwise disturbing the pavement, curb and gutter when relaid and reset in front of his said premises by virtue of said ordinance; and that your orators may have such other and further relief as the nature and circumstances of the case may require, and as shall be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orators not only the State's writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said John McQuade, his servants, agents and workmen, enjoining and restraining them and each of them from in any way interfering with, disturbing or obstructing the relaying of the pavement and
7 resetting of the curb and gutter in front of said premises, on the northerly side of Ferry street, in the city of Trenton aforesaid, pursuant to the provisions of the ordinance hereinbefore particularly mentioned and referred to; and from tearing up, barring out or otherwise disturbing the pavement, curb and gutter when relaid and reset in front of his said premises by virtue of said ordinance; but also the State's writ of subpœna likewise issuing out of and under the seal of this honorable court to be directed to the said John McQuade, commanding him on a certain day and under a certain penalty therein to be expressed, to be and appear before your honor in this honorable court, then and there to answer the premises and stand to, abide by and perform such order and decree therein as to your honor shall seem meet and as shall be agreeable to equity and good conscience.

And your orators, as in duty bound, will ever pray, &c.

EDWIN ROB'T WALKER,
Sol'r and of Council with Complainants.

STATE OF NEW JERSEY, }
County of Mercer, } *ss:*

John M. Rulon, of full age, being duly sworn according to law, on his oath says, that he is and has been continuously since the twentieth day of April, eighteen hundred and ninety-two, the street commissioner of the city of Trenton; that he knows John McQuade, the defendant in the above bill named; that he knows the premises of John McQuade, on the northerly side of Ferry street, in the city of Trenton, and that the said premises are situate on that portion of said Ferry street, the grade of which was changed by an ordinance entitled "An ordinance to change the grade of a portion of Lamberton and Ferry streets, and to widen Bridge street, between Union and Warren streets, also to vacate a portion of Bridge street," passed February seventee-th, eighteen hundred and ninety-one; that the grade of Ferry street aforesaid had been changed pursuant to said ordinance, before deponent became street commissioner of said city of Trenton; that as street commissioner as aforesaid,
8 he did, on or about the — day of June, eighteen hundred and ninety-two, give to Joseph R. Gilkyson, agent of the

Pennsylvania Railroad Company, in the city of Trenton, authority and permission to relay and reset the curb and gutter and pavement in front of the aforesaid property of said John McQuade, on said Ferry street, at the grade established by said ordinance; that after the giving of the said authority and permission as aforesaid, and under and pursuant to the authority so by deponent given to the said Gilkyson, he, the said Gilkyson, agent as aforesaid, on or about the — day of June, eighteen hundred and ninety-two, by his workmen, servants, and employees, did reset and relay the curb, gutter and pavement in front of the property of the said John McQuade aforesaid, and that thereafter, and on or about the — day of June, in the year last aforesaid, the said John McQuade did, willfully and deliberately, tear up the pavement so as aforesaid laid in front of his premises, and disturbed, barred out and upset the curb and gutter so laid in front of his said premises on Ferry street, and that the said pavement in front of said McQuade's premises has since remained, and still remains, torn up and disturbed, and the surface of the street in front of his premises, by reason thereof, is uneven, holds water in times of rainfall, and is rendered well-nigh impassable for pedestrians, by reason of its condition aforesaid, the said McQuade having dug a hole three or four feet square in the middle of the sidewalk, which he keeps filled with water when the same is not filled by the fall of rain; that the said John McQuade has himself informed this deponent that he disturbed and tore up the said pavement aforesaid and broke down the curb-line thereof, and that he will not permit the said pavement to be relaid, and that if it should be relaid he will tear it up again, and as often as it is relaid and as fast as it is relaid; that deponent has reset the curb-line in front of said premises, which at the present time remains undisturbed; that the aforesaid pavement, when laid in front of said McQuade's property, consisted of flagstone six feet in
9 width laid in the middle of said pavement, with bricks on the house side of said flags and also on the curb side of said flags; that the said McQuade has torn up the said flagstones and also all of the bricks aforesaid, and carted the same into and keeps them in the rear yard of his said premises, where the same now remains.

And deponent further says, that he has lived in the city of Trenton for the past thirteen years; that he is well acquainted with the property of the said John McQuade on the northerly side of Ferry street, in front of which the grade of Ferry street was changed by virtue of an ordinance of the common council as hereinbefore mentioned, and has been acquainted with the said premises and locality in which it is situate for the last twenty-five years; that at the time the change of grade was made on portions of Lamberton and Ferry streets, in the city of Trenton, under and by virtue of the ordinance aforesaid, and before this deponent became street commissioner of the city of Trenton, the Pennsylvania Railroad Company, who, by its agents, servants and workmen, actually made the change of said grade, provided the means to carry off all surface water whose then present course was diverted or changed by the aforesaid alterations

in said streets, by placing in and under said streets a good and sufficient surface-water drain; that deponent was frequently in the locality aforesaid where such changes of grade were made and saw the aforesaid drains built and put in, and that since deponent has been street commissioner as aforesaid, he has had and still has official knowledge of the fact of the existence of said drain, and knows that it is sufficient for the purpose for which it was constructed and intended.

JOHN M. RULON.

Sworn and subscribed before me, this thirteenth day of March, 1894.

THOS. E. KEATING,
Notary Public.

STATE OF NEW JERSEY, } ss.:
County of Mercer, }

10 Joseph R. Gilkyson, of full age, being duly sworn according to law, on his oath says, that he is the freight agent of the Pennsylvania Railroad Company in the city of Trenton; that as such agent he had charge of the laying of additional tracks of the Pennsylvania Railroad Company through a portion of the city of Trenton, in the years eighteen hundred and ninety, ninety-one and ninety-two; that on or about the — day of June, eighteen hundred and ninety-two, under and by virtue of the power and authority given to said Pennsylvania Railroad Company by an ordinance entitled "An ordinance to change the grade of a portion of Lamberton and Ferry streets, and to widen Bridge street, between Union and Warren streets, also to vacate a portion of Bridge street," passed February seventeenth, eighteen hundred and ninety-one, and also in pursuance of the authority and direction of John M. Rulon, street commissioner of the city of Trenton, deponent, by and with the aid of certain servants, agents and employees of the said Pennsylvania Railroad Company, did change the grade of Ferry street in said city of Trenton, in front of the lands and premises of John McQuade, on the northerly side of Ferry street; that previous to said — day of June, eighteen hundred and ninety-two, the grade of the road of said Ferry street beyond the curb-line of the property of said McQuade, had been changed in accordance with said ordinance, and that on said last-mentioned day and year deponent caused the sidewalk to be laid and the curb and gutter to be set in front of said McQuade's premises, at the said grade so established as aforesaid; that while the servants, workmen and agents of said railroad company, who were so employed in changing the grade of said sidewalk and relaying the said pavement thereon, and resetting the said curb-line and gutter thereof, the said John McQuade interfered with the work by not only notifying and warning the deponent and his assistants aforesaid to absolutely desist and refrain from changing the grade of said sidewalk and relaying the said pavement and resetting the said curb, but also endeav-

ored forcibly to interfere with and obstruct said work, and while
11 deponent was then and there present as aforesaid, the said John McQuade, from the second story window of his house on the lot of land in front of which said grade was being changed and said pavement and curb and gutter relaid and reset, threw hot and cold water on the men so engaged in the work aforesaid, himself, and had several other persons throwing water, both hot and cold, out of the second-story window on the men so at work aforesaid; that said work occupied the space of about two hours as nearly as deponent can now recollect, and that during all that time the said McQuade interfered with and tried to prevent the said work in the manner aforesaid in this deponent's presence; that in order to prosecute said work, and in a measure preventing said men so at work being deluged with water from said McQuade and his abettors aforesaid, the workmen so engaged in said work spread a large canvass on poles over their heads in front of the property of said McQuade and maintained the same during all the time that said work progressed; that since the work aforesaid was completed and the said sidewalk regraded and pavement relaid and curb and gutter reset at the grade established by said ordinance, the same has been torn up and the flagstones and bricks composing said pavement removed and a large hole dug in the middle of said pavement, and the curbstones pushed out of place and off the line on which they were set; that deponent saw this condition of affairs the next day after the said sidewalk was regraded and pavement relaid and curb and gutter reset; and that on one occasion since said last-mentioned occurrence, said John McQuade has told this deponent that he would not permit said sidewalk to be regraded and pavement relaid and curb reset, and that he would kill this deponent or any other man who would attempt to regrade said sidewalk, relay said pavement or reset said curb and gutter.

And deponent further says, that at the time of the change of the said grade on the aforesaid portions of Lamberton and Ferry streets, the Pennsylvania Railroad Company, by its agents, servants and workmen, under the supervision of this deponent, provided
12 means to carry off all surface water whose then present course was diverted or changed or would be diverted or changed by the aforesaid alterations in said streets, by placing in and under said streets a good and sufficient surface-water drain in accordance with the proviso for that purpose in said ordinance contained; and deponent further says that since the putting in of said drain, hitherto and until and at the present time, he, this deponent, has personal knowledge of the fact of the existence of said drain, and knows that it is sufficient for the purpose for which it was constructed and intended.

J. R. GILKYSON.

Sworn to and subscribed before me, this thirteenth day of March, 1894.

WM. J. RYAN,
Notary Public.

STATE OF NEW JERSEY, } ss:
County of Mercer, }

William Hartman, being duly sworn according to law, on his oath says, that he is captain of police in the city of Trenton, in charge of the second police district; that in and during the month of June, eighteen hundred and ninety-two, deponent was such police captain of said second district, in which is situate the property of John McQuade, on the north side of Ferry street, in said city; that on the seventeenth day of June, in the year last aforesaid, deponent received a message from the chief of police of said city of Trenton, stating that the mayor and president of the board of public works of said city had given orders to have a detail of police at said McQuade's premises to prevent any breach of the peace pending the relaying of the pavement and the resetting of the curb and gutter in front of said McQuade's said premises, to conform to the grade established by ordinance of common council entitled "An ordinance to change the grade of a portion of Lamberton and Ferry streets, and to widen Bridge street, between Union and Warren streets, also to vacate a portion of Bridge street," passed February seventeenth, eighteen hundred and ninety-one; that deponent
13 went to said premises on said day, taking several officers with him; that deponent called on the said John McQuade, in his house on said premises, and informed him by whose orders he was there and for what purpose he was there; that the said John McQuade then and there told this deponent that he, McQuade, ignored the orders of the mayor and president of the board of public works and chief of police and any other city authority; that he, McQuade, would not allow any one to go to work there relaying his pavement and resetting said curb and gutter; that when deponent met McQuade on his said premises as aforesaid the said McQuade had a pitchfork in his hand; that when the men went to work to relay said pavement and reset said curb and gutter as aforesaid, the said John McQuade shoved and pushed three or four of the men so at work; that he also cut the cord or plumb line that was stretched along the curb to give the grade; that deponent then and there placed the said McQuade under arrest, and sent him to the second district police station in charge of an officer; that the said McQuade immediately procured bail and returned to said premises in about a half an hour after the time of his arrest as aforesaid; that while the men proceeded with their work of relaying said pavement and curb and gutter they were interfered with by persons in the house of said John McQuade throwing water on the men from the upstairs windows, and that to enable the men to proceed with their work and prevent themselves being deluged with water, they stretched a canvass over their heads on poles while the said work was progressing.

WM. HARTMAN.

Sworn and subscribed before me, this thirteenth day of March, A. D. 1894.

G. V. PACKER,
Notary Public for N. J.

14 An ordinance to change the grade of a portion of Lamberton and Ferry streets and to widen Bridge street, between Union and Warren streets, also to vacate a portion of Bridge street.

Whereas, the Pennsylvania Railroad Company, lessee of the United New Jersey Railroad and Canal Company, in pursuance of authority conferred upon them for that purpose by the legislature of this State, are engaged in widening their railroad in the city of Trenton and making a four-track road thereof through said city; and whereas, the said changes in the said railroad cannot be properly made unless the grade of a certain portion of Lamberton and Ferry streets be altered and also certain portions of Bridge street be vacated as hereinafter provided; and whereas, the said changes in the said railroad will promote the interests of the said city of Trenton; and whereas, the said Pennsylvania Railroad Company have agreed with the Inhabitants of the City of Trenton that they will furnish and pay for the labor and materials necessary to make the said alterations, and to indemnify them against any expenses or losses that may be incurred as damages to property affected, or otherwise, by the said change of grades and the said vacation of portions of said street; now, therefore,

The Inhabitants of the City of Trenton do ordain:

Section 1. That the grade of a portion of Ferry street, beginning at a point in the north curb-line of said street, at a distance of 118.5 feet west from the west curb-line of Lamberton street, at an elevation of 72.17; thence ascending eastwardly, with a grade of six feet per hundred, for a distance of 118.5 feet to the west curb-line of Lamberton street, where the elevation will be 79.28; thence across Lamberton street to the east curb thereof, where the elevation will be 80.70; thence de-cending eastwardly, with a grade of three feet per hundred, for a distance of 128 feet to a point in the present curb-line of Ferry street, where the elevation will be 76.86; also beginning at a point in the south curb-line of Ferry street, at a distance of 97 feet west from the west curb-line of Lamberton street, where the elevation will be 72.14; then ascending eastwardly,
15 with a grade of six feet per hundred, for a distance of 97 feet to the west curb-line of Lamberton street, where the elevation will be 77.96; thence ascending eastwardly, with a grade of about three feet per hundred, to a point in the south curb-line of Ferry street, 23 feet east from the east curb-line of Lamberton street, where the elevation will be 80.00; thence descending, with a grade of three feet per hundred, for a distance of 105 feet to a point in the south curb-line of Ferry street, where the elevation will be 76.85.

Also to change the grade of a portion of Lamberton street, beginning at a point in the west curb-line of said street about 831 feet south from the southerly curb-line of Market street, where the elevation will be 76.00; thence ascending southerly, with a grade of eight feet per hundred, a distance of 175 feet to a point 12 feet north from the north end of a proposed new bridge, where the elevation will be 90.0; thence crossing the proposed bridge, with a vertical curve, to a point on the south side thereof, where the elevation will be 89.6;

thence descending, with a grade of eight feet per hundred, a distance of 129 feet to the north curb-line of Ferry street, where the elevation will be 79.28; thence crossing Ferry street to the south curb thereof, whereof the elevation will be 77.96; thence descending, with a grade of seven feet per hundred, a distance of 60 feet to a point in the present west curb-line of Lamberton street, where the elevation will be 73.76; also beginning at a point in the east curb-line of Lamberton street, about 831 feet south from the southerly curb-line of Market street, where the elevation will be 76.00; thence ascending southerly, with a grade of eight feet per hundred, a distance of 175 feet to a point on the north end of a proposed new bridge, where the elevation will be 90.0; thence crossing the proposed bridge with a vertical curve to a point 18 feet south from the south end thereof, where the elevation will be 90.0; thence descending, with a grade of eight feet per hundred, a distance of 116.25 feet to the north curb-line
16 of Ferry street, where the elevation will be 80.7; thence crossing Ferry street to the south curb thereof, where the elevation will be 79.31; thence descending, with a grade of seven feet per hundred, a distance of 66 feet to a point in the present east curb of Lamberton street, where the elevation will be 74.69, be and the same is hereby changed.

SECTION 2. That the following portions of Bridge street be vacated, namely: No. 1. Beginning at a point on the north side of Bridge street, $36\frac{8}{10}$ feet westerly from the west side of Union street, and $12\frac{7}{10}$ feet distant from the centre line of said railroad company's proposed new tracks; thence parallel with and $12\frac{7}{10}$ feet distant from said centre line, with a radius of $1,885\frac{5}{10}$ feet, a distance of $162\frac{5}{10}$ feet to the east side of Decatur street; thence north, one degree sixteen minutes east, $24\frac{5}{10}$ feet to the fence along the present tracks of the said railroad company; thence along said fence north, 78 degrees 44 minutes east, $53\frac{7}{10}$ feet, and south, nine degrees 42 minutes east 3 feet, and north, eighty degrees 18 minutes east, $24\frac{5}{10}$ feet, and south, 89 degrees 55 minutes east, $82\frac{2}{10}$ feet to the place of beginning. No. 2. Beginning at a point on the west side of Decatur street and the fence along the said railroad company's present tracks; thence along the west side of Decatur street south, one degree 16 minutes west, $24\frac{5}{10}$ feet; thence parallel with and $12\frac{7}{10}$ feet distant from the said new centre line of said railroad company's proposed new tracks, with a radius of $1,885\frac{5}{10}$ feet, a distance of 141 feet to the east side of Warren street: thence along the east side of Warren street north, one degree 30 minutes east, $24\frac{4}{10}$ feet; thence along the fence along the present tracks of said railroad company north 82 degrees 56 minutes east, 140 feet to the place of beginning. No. 3. Beginning at the southwest corner of Warren and Bridge street; thence along the south side of Bridge street north, 88 degrees 19 minutes west, $228\frac{4}{10}$ feet, and south, 62 degrees 30 minutes west, $12\frac{2}{10}$ feet, and south 49 degrees 32 minutes west $19\frac{6}{10}$ feet to the east side of Fair street; thence along the east side of Fair street north, one degree 12 minutes east, $32\frac{3}{10}$ feet to the stone wall along
17 the present tracks of said railroad company; thence along the stone wall north, 89 degrees 11 minutes east $253\frac{7}{10}$ feet to

the west side of Warren street; thence along the west side of Warren street south, one degree 30 minutes west, $24\frac{6}{10}$ feet to the place of beginning.

All the said change of grades and vacation of portions of said streets are to be made in strict conformity with the profiles of said changes of grade, submitted with the applications of the Pennsylvania Railroad Company, and dated December 29th, 1890, and January 27th, 1891, and numbered 4573 and 4584, respectively, and in accordance with a plan of said vacation of portions of said street, dated June 3d, 1890, numbered 4276, made by the said Pennsylvania Railroad Company, and now on file in the office of the city surveyor, and the city surveyor is hereby directed to record each of the grades and lines hereby changed in the street book; and the Pennsylvania Railroad Company are authorized to erect an iron bridge over their four tracks on the line of said Lamberton street in accordance with plans made by the Pennsylvania Railroad Company and numbered 4572, now on file in the office of the city surveyor, provided that the said Pennsylvania Railroad Company will at its own expense lay out, grade, curb, pave and dedicate a new street thirty (30) feet wide between Warren and Fair streets, and will widen Bridge street, between Union and Warren streets, to a width of not less than thirty-five (35) feet, as shown on a plan dated June 3, 1890, made by the Pennsylvania Railroad Company and now on file in the office of the city surveyor, and will dedicate the part so widened to the city of Trenton, and will provide means to carry off all the surface waters whose present course will be diverted or changed by the aforesaid alteration and changes in said streets, and provided the said Pennsylvania Railroad Company will file with the city solicitor a satisfactory agreement with the Inhabitants of the City of Trenton, that they will furnish and pay for the labor and materials necessary to make the said alterations, and indemnify the said Inhabitants of the City of Trenton against any ex-
18 penses or losses which may be incurred as damages to property affected or otherwise by the said changes of grades and said vacation of portions of said street, which could be enforced against the city by suit, and shall within thirty (30) days after the passage hereof file a satisfactory bond with the city solicitor for the faithful performance of said agreement before mentioned; and this ordinance shall not go into effect until the said bond is filed and the expense of the passage of this ordinance is paid.

Passed common council, Feb. 17, 1891.

GEO. R. WHITTAKER, *President.*

Attest: JNO. C. OWENS.

Approved Feb. 21, 1891.

A. A. SKIRM, *Mayor.*

I, Charles J. Fury, city clerk of the city of Trenton, and keeper of the records of the common council thereof, do hereby certify that the foregoing is a true copy of an ordinance of said city duly passed by the common council thereof, on February seventeenth, eighteen

hundred and ninety-one, and approved by the mayor of said city on February twenty-first, eighteen hundred and ninety-one, entitled "An ordinance to change the grade of a portion of Lamberton and Ferry streets, and to widen Bridge street, between Union and Warren streets, also to vacate a portion of Bridge street," as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the common seal of said city of Trenton, this twelfth day [L. S.] of March, eighteen hundred and ninety-four.

CHAS. J. FURY, *City Clerk.*

A true copy.

ALLAN L. McDERMOTT, *Clerk.*

19 *Answer.*

The answer of John McQuade to the bill of complaint of the Inhabitants of the City of Trenton.

This defendant, John McQuade, to the bill of complaint of the Inhabitants of the City of Trenton, or to so much thereof as this defendant is advised it is material or necessary for him to answer, answering says:

I. That he admits that the complainants are a municipal corporation, as set forth in the bill of complaint.

II. That he admits that the common council of the city of Trenton, on or about the seventeenth day of February, eighteen hundred and ninety-one, did pass an ordinance entitled "An ordinance to change the grade of a portion of Lamberton and Ferry streets, and to widen Bridge street, between Union and Warren streets, and also to vacate a portion of Bridge street," in said city of Trenton, and that said ordinance was approved by the mayor of said city and published, as in said bill of complaint mentioned.

III. And this defendant further answering says, that he has no information or knowledge concerning the allegations in said bill of complaint that the change of grade of Lamberton and Ferry streets, as set forth in said bill of complaint, was made and that said ordinance was passed at the special instance and request, or by the procurement of the Pennsylvania Railroad Company upon the terms and conditions in said bill of complaint set forth, save the information and knowledge conveyed to this defendant by the allegations in said bill of complaint, and the recitals contained in the aforesaid ordinance and common rumor, and that therefore this defendant can neither admit nor deny such allegations in said bill of complaint made, but leaves the complainants to make such proof thereof as they may be advised is necessary.

IV. And this defendant further answering says, that he
20 admits that the grades of the said Ferry and Lamberton streets, since the passage of the aforesaid ordinance, have been altered, and that the Pennsylvania Railroad Company has dedicated a new street between Warren and Fair streets, and widened Bridge street between Union and Warren streets, and dedi-

cated the part so widened to the city of Trenton, but this defendant has no information or knowledge, other than what has come to him through the allegations contained in the said bill of complaint and through common rumor, that the said Pennsylvania Railroad Company, at the time of making the said change of grade, did pay the expense thereof, or that said company did file with the city solicitor a satisfactory agreement and bond with the Inhabitants of the City of Trenton that it would furnish and pay for the labor and materials necessary to make said alterations and indemnify the said city against any losses or expense which might be incurred as damages to property affected by said change of grades, or that said company paid the expense of the passage of said ordinance, including its printing and publication, or that said company performed all and singular the things on said company's part required to be done before said ordinance should have force and effect, and therefore this defendant can neither admit nor deny such allegations made in said bill of complaint, and leaves the complainants to make such proof thereof as they may be advised is necessary.

V. And this defendant further answering says, that he denies the allegation in said bill of complaint contained that said Pennsylvania Railroad Company provided means to carry off all surface water, the course of which was diverted or changed by the alterations made as aforesaid in said Ferry and Lamberton streets, and on the contrary, says that the provisions made for carrying off said surface water are utterly inadequate, and this defendant's property, in consequence of the inadequate provisions made as aforesaid, has, in a time of heavy rain, been damaged by the overflow of water into defendant's cellar from the street in front of this defendant's house and lot.

VI. And this defendant further answering says, that he
21 admits that he owns and occupies the house and lot on the northerly side of Ferry street, in said city of Trenton, as in said bill of complaint mentioned.

VII. And this defendant further answering says, he admits that some time in the month of June, eighteen hundred and ninety-two, Joseph R. Gilkyson, in said bill of complaint mentioned, by his workmen and employees, did reset and relay the pavement and curb in front of this defendant's property, and that the same was done without the consent of this defendant and against his protests and his efforts to prohibit the same; but that this defendant has no information or knowledge, other than that conveyed to him in and by the said bill of complaint, as to whether such work was done by said Gilkyson and his workmen and employees under the authority of the street commissioner of the city of Trenton, or otherwise, and can therefore neither admit nor deny this allegation in the bill of complaint contained, and leaves the complainants to make such proof thereof as they may be advised is necessary.

VIII. And this defendant further answering says, that he admits that after the said pavement upon the sidewalk in front of his premises was relayed as aforesaid, and after said curb was reset as aforesaid, this defendant did take up said pavement and remove said

curb, and that the said pavement has not since that time, been relayed.

IX. And this defendant further answering says, that the facts and circumstances connected with the attempt to alter the grade of Ferry street, in front of this defendant's house and lot, and to relay the curb and pavement upon the sidewalk in front of this defendant's house and lot, relating to the same matters complained of — the said bill of complaint, are as follows:

That, prior to the passage of the aforesaid ordinance, this defendant had erected houses upon the lots owned by him and fronting on said Ferry street, in accordance with the grade of said Ferry street, as the same had been established by the municipal authorities of the city of Trenton; that the said grade had a descent in front of
22 his property from east to west, and on beyond his property to the Trenton water power, into which *were* discharged the surface water flowing through said street; that about the time of the passage of said ordinance, the Pennsylvania Railroad Company, being desirous of widening its road-bed so as to permit of the laying of a four-track road, built over its tracks in the line of Lamberton street, for the use of the public, an elevated bridge; that in order that said elevated bridge might be accessible, it was necessary to build approaches thereto by depositing in Lamberton street and in Ferry street, in front of the property of this defendant, large quantities of dirt, and to the end that said Pennsylvania Railroad Company might construct said elevated bridge in Lamberton street, the said ordinance was passed, purporting to make a change or alteration in the portions of Lamberton and Ferry streets adjacent to said elevated bridge, but this defendant is advised, and therefore insists, that the changes of grade attempted to be authorized by said ordinance were in no proper or legal sense such a change or alteration of grades of the streets as is authorized by the charter of the city of Trenton or by any law of this State, but that the alteration attempted to be authorized by the said ordinance was a work relating to, and only to, the construction of approaches to the said elevated bridge, and therefore was a work incidental to the construction of said elevated bridge, and not a matter over which the said common council could legally exercise any authority whatsoever, by ordinance or otherwise.

X. And this defendant further answering says, that by the attempted alteration of the grades as aforesaid, the surface water in times of heavy rain does now, instead of passing through the street in front of this defendant's property from east to west to the water power as it formerly did, is now caused to accumulate in the said street immediately in front of this defendant's property, the grades of the street descending in both directions to a lowest point in front of this defendant's property, and that said surface water, in
23 times of heavy rain, is likely to overflow the sidewalk and to flow into this defendant's cellar, and thereby doing great damage.

XI. And this defendant further answering says, that if the sidewalk in front of this defendant's property be raised to the grade

mentioned in the aforesaid ordinance the cellar windows of the house in which this defendant resides will be closed up, or practically so, and this defendant will be denied his right to light and air in the cellar of his said house; and further, that this defendant's free access from his said property to the said street will be greatly impaired.

XII. And this defendant further answering says, that he is advised and, therefore, will insist that even if the allegations in said bill of complaint are all true, it appears thereby that the attempted alteration of the grade aforesaid in said Lamberton and Ferry streets, and especially in front of this defendant's property, is a work carried on by, at the expense of, and for the sole benefit of the Pennsylvania Railroad Company, and that said company have no power or authority under the law to do the said work, and thereby damage the property of this defendant, without first making compensation to this defendant for the damage or loss which he will sustain by reason of the said work, and that he has the right to prevent the completion of the said work until he shall have received full compensation for all damages which he will sustain by the said work; and this defendant further submits that the complainants are not entitled to the relief prayed for in their bill of complaint, and this defendant asks that he may have the same benefit of this defense as if he had demurred to the said bill of complaint for want of equity therein.

And this defendant further answering says, that he is advised and, therefore, will insist that by the allegations contained in the said bill of complaint, it appears that the complainants have no interest in the subject-matter of said bill of complaint, and this defendant prays that he may have the same benefit of this defense as if he had demurred to said bill of complaint for want of equity therein.

24 And this defendant further answering says, that he is advised and, therefore, will insist that under the constitution of this State he has the right to free *excess* to said Ferry street from his said property fronting thereon, and to the free admission into his house fronting on said Ferry street of light and air from said street; and further, that no alteration in the grade of said street in front of his property and no exclusion of light and air from his said house can be lawfully made unless and until a proper method of procedure shall have been prescribed by the legislature of this State for the exercise of the power of eminent domain, whereby this defendant may receive proper and adequate compensation for the damage that will result to him by such alteration of grades and exclusion of light and air, and this defendant prays that he may have the same benefit of this defense as if he had demurred to the said bill of complaint for want of equity therein.

All which matters and things this defendant is ready to maintain, aver and prove, and prays to be hence dismissed with his cost in this behalf most wrongfully sustained.

——— ———.

STATE OF NEW JERSEY, } ss.:
County of Mercer, }

John McQuade, of full age, being duly sworn according to law, on his oath says, that he is the defendant mentioned in the foregoing answer; that the same has been read to him, and he knows the contents thereof; that the said answer is true, except as to matters stated to be on information and belief, and as to such matters he believes it to be true.

And this deponent further says, that prior to the passage of the ordinance mentioned in the bill of complaint filed in this cause, the grade of Ferry street in front of the property owned by this deponent was a descending grade from east to west, and that the surface waters flowing through the gutters of said street were discharged into the Trenton water power; that after the passage of the said ordinance the Pennsylvania Railroad Company erected a
25 bridge over its tracks in Lamberton street at such great height as to necessitate the building of approaches thereto in order to make the same accessible; that the changes of grade attempted to be authorized by the said ordinance were designed only for the purpose of fixing the grade of the approaches to the said elevated bridge; that, if the sidewalk in front of this deponent's property be constructed on the grade of said approaches to said elevated bridge, the cellar windows of the house in which this deponent resides will be almost completely buried beneath the surface of the sidewalk, and the light and air thereby excluded from this deponent's property, and that the stoop leading to the front door of this deponent's house will also be partially buried beneath the surface of the sidewalk.

And this deponent further says, that the work of constructing the said approach to said bridge in front of this deponent's property has been done with this deponent's consent, and against his most vigorous protests and his active efforts to prohibit it, and that no estimate under or pursuant to any legal proceedings whatsoever of the damages he will sustain by reason of the construction of the said approach and the alteration of said grade has ever been made, and that no agreement has ever been made concerning said damages between this deponent on the one hand and the complainants or the Pennsylvania Railroad Company on the other, and that this deponent has never received, either from the complainants or from the Pennsylvania Railroad Company, any compensation for such damages.

——— ———.

Sworn to and subscribed before me, this — day of April, A. D. 1894.

——— ———.

Mr. John Rellstab for the complainant.
Mr. R. S. Woodruff and Mr. W. M. Lanning for the defendant.

Transcript of shorthand notes in the above-stated cause taken before his honor John T. Bird, V. C., at the state-house, in Trenton, N. J., on November 28th, 1894.

Mr. RELLSTAB: It is agreed that the affidavits annexed to the bill of complaint and the answer may be used on the argument at final hearing with the other proofs offered at the final hearing.
Mr. LANNING: That is correct.

JOHN MCQUADE, being duly sworn in his own behalf, testifies as follows:

Direct examination by Mr. LANNING:

Q. You are the defendant in this case?
A. Yes, sir.
Q. You are the owner, I believe it is admitted, of two houses on Ferry street, are you not, in front of which the work spoken of in the pleadings was done?
A. Yes, sir.
Q. Do you remember the occasion of the passage of an ordinance authorizing the grading, or pretending to authorize the alteration of the grade of Ferry street?
A. Yes, sir.
Q. That was passed, I think, by the common council or board of works; which?
A. Common council.
Q. Did you attend any meeting of the common council when that matter was before them for consideration?
A. Yes, sir.
Q. For what purpose?
A. To object.
27 Q. Did you object?
A. Yes, sir; I did.
Q. Before the common council?
A. Yes, sir.
Q. Objected to what?
A. The changing of the grade on Ferry street.
Q. Subject to the passage of the ordinance did you at any time make any objections to the alterations of this grade?
A. I did.
Q. State whether you made any objections between the time of the passage of the ordinance and the beginning of any work upon that street?
A. They were in contemplation of making a new street on the north of the railroad, and abandoning changing these grades, and

I went around with Mr. Calwell to get signatures to that paper objecting to the change of the street.

Q. Was that before any change was made?

A. It was after the ordinance was passed.

Q. But before any alteration in the grade of Ferry street was made?

A. Yes, sir; before; I may say also that they abandoned this proposal; they tried it, I was in favor of it, but they came back to the original plan, the change of the grade.

Q. What I want to know is whether you at any time made any objection to the changing of the grade and the work on Ferry street before the ordinance?

A. I did; Mr. Bowles came to me.

Q. Who is he?

A. Agent of the railroad company.

Q. What was his position?

A. I believe he was engineer for the railroad.

Q. You mean the Pennsylvania railroad?

A. Yes, sir.

Q. You went to Mr. Bowels?

A. No, sir; he came to me.

Q. Was that before any work was done; I am speaking of any work on your property?

28 A. Before any work was commenced.

Q. What was said?

A. He said he wanted to see me; I was present at the time and went to his office and he told me that they were going to make this change, and I told him I was sorry; I told him I would rather they would open the other street, but he came to that conclusion he said and he asked what I would want; I told him that I could not tell him at that time; he said something about $500; I said he might as well offer me 500 cents; and a few days afterwards I met him on Centre street.

Q. Mr. Bowles?

A. Yes, sir; and he asked me if I had made my mind up; I said I wished they would not make that change, but as long as they were going to do it I wanted $3,000; he said they would not give that much; I said Do not touch anything that belongs to me, and since that they have commenced; they were coming to the raise at the junction of Ferry and Lamberton streets——

Q. Was that pipe used?

A. Previous to this change of grade, so that when they would change the grade they would be ready to conduct the water.

Q. In front of your property?

A. Not in front of my property; it was constructed on the south side of the street; I live on the north side of Ferry street, and when it came across the street I was absent; I told the men not to disturb the gutter-stones and the street outside the gutter-stones, not to touch them; I would not allow it.

Q. You told the men that were at work?

A. Yes, sir; and so when they were laying or beginning to lay

this pipe across the street; they had come up as far as the water power, and begun there at my place.

Q. Did you at any time later make any objection to the work?

A. I did; I would not allow them to put it in.

Q. Put what in?

29 A. The inlet that was to receive this water and this pipe; Mr. Bowles came to me and he said (interrupted)——

Q. At this time, when you would not allow them to put in the inlet, had any alteration in grade been yet commenced?

A. None whatever.

Q. Did you subsequently make any objections?

A. I made it all the time up to the present moment.

Q. When they attempted to make any alteration in the grade in front of your house, did you make any altercation?

A. That was on the seventeenth of June, 1893; that was eighteen months afterwards.

Q. That was when the pavement was laid?

A. Yes, sir; when they raised the pavement.

Q. At that time what did you do?

A. I resisted then, did I not?

Q. There were men working there?

A. They came and was tearing off my bricks, and I objected to that.

Q. What men were they?

A. Railroad company.

Q. Italians?

A. Yes, sir; they were in charge of a young man named Mertit, I think, and he and I had a little collision about it, and we pulled one another around the sidewalk, and I told him I didn't want the bricks torn up, and I went uptown to get a warrant for assaulting me, and he came to get one for me, and by the time I got back the bricks were removed.

Q. The bricks that were on either side of the sidewalk were removed?

A. Yes, sir.

Q. The sidewalk through the middle were stone and bricks on the sides of the stone?

A. Yes, sir.

Q. The bricks were torn up, but the grade was not changed?

A. That was 11 o'clock, I think, but by the time I got back

30 the bricks were removed—I don't know where, for about 2 o'clock, the first notice I had of it Captain Hartman came in and said he was sent down by the authorities to prevent me from interfering with those men in doing that work.

Q. Captain Hartman was a policeman here and had charge of a lot of men?

A. Yes, sir; and restrained me from interfering with the men.

Q. What did you do?

A. Cut the line that they had in setting and resetting the curbstone, and they put me under arrest; I was taken out to the station-house, and gave bail to appear; by the time I came back there was

water-throwing; I think they were changing the grade in front of my place; flagstones were all out, and raising it with dirt.

Q. Then, at the time you now speak of, the alterations in grade had partly been made on June 17th?

A. On June 17th they commenced to change the grade.

Q. On June 17th they commenced to change the grade of the sidewalk?

A. Yes, sir.

Q. Previous to June 17th, had they already altered the grade of the streets between the curbs?

A. No, sir.

Q. I mean the street itself?

A. No, sir; certainly not; the grade certainly never came any farther than where it was intended it would on the sidewalk and the sidewalk neither was changed; neither was the street.

Q. Was the grade of Ferry street which formed the approach up to the bridge altered before June 17th?

A. To where the grade is now on the sidewalk; no, sir.

Q. Had any dirt been put in the street prior to that time, prior to June 17th?

A. Not to where the grade is changed now; it was shortened 21 feet by resolution; the grade came no farther than where it was put in by resolution.

Q. Then I understand you to say you commenced your
31 objection to this proposed resolution with common council before they passed the ordinance?

A. I have; yes, sir.

Q. And that you continued making objections from that time on?

A. I did; yes, sir.

Q. As you said "to the present moment"?

A. Yes, sir.

Q. At any time during this contest have you removed any portion of the sidewalk in front of your house?

A. Yes, sir.

Q. What portion?

A. Flagstones.

Q. That is the flagstones running through the middle of the sidewalk?

A. Yes, sir; I disturbed that the seventeenth of June, and because the railroad company succeeded in changing the grades they had thrown water on them and so on from the house that time of removing the flagstones and disturbing the curbstone, and the flagstones remained until the seventh of March, and on the seventh of March, 1893, I removed them into my yard.

Q. Did you ever remove the bricks on the other side of the grade which formed the sidewalk?

A. No, sir; they never were removed.

Q. You spoke a moment ago of having been taken away, when you got back they were gone, that was the original sidewalk before any alteration?

A. Yes, sir; and the bricks have never been laid on the sidewalk since.

Cross-examination by Mr. RELLSTAB:

Q. When did you appear before common council in reference to changing the grade?

A. During the contemplation of these changes.

Q. Can you give the date?

A. No, sir.

Q. Did you appear more than once?

A. I believe I was there several times; I spoke myself in opposition to it.

32 Q. Did you speak more than once?

A. No, sir; there were several propositions before common council in reference to change of grades in order to allow the railroad company to lay the four-track system.

Q. Through the city of Trenton, was there not?

A. Yes, sir.

Q. There was one that contemplated the vacation of a portion of Lamberton street; is that so?

A. Yes, sir; I think so.

Q. Was it not that one you spoke against, the one that contemplated the vacation of part of Lamberton street?

A. I did also speak before that.

Q. Did you speak more than once?

A. No.

Q. Then your objection was to that contemplated change, which meant the vacation of part of Lamberton street?

A. Yes, sir.

Q. As a matter of fact you appeared only before common council once and spoke against the proposed change of grade?

A. Yes, sir.

Q. And that proposition was before common council at the time it was considering that plan, which meant the vacation of Lamberton street, a portion of it?

A. I think that was not the case; it was about the raising of the bridge that I objected to.

Q. Are you sure?

A. I think so.

Q. At any rate, you went before the common council and spoke against the attempted change once; the first change was in reference to the vacating and changing in Lamberton street, was it not?

A. Yes, sir.

Q. If that plan had been carried out, there would have been no change in the grade over Ferry street on Lamberton street, reaching the present bridge, would there?

A. The grade would have been the same.

33 Q. The grade would have been the same if they hadn't raised the bridge?

A. Of course, then, not; what I wanted was not to disturb Ferry street where I live.

Q. The change of grade as actually consum-ated meant the raising

of the street toward the bridge on Lamberton street, crossing the railroad and extending below Ferry street, did it not?

A. Yes, sir.

Q. And that necessitated the building of that embankment on Ferry street north toward Ferry street toward you- premises?

A. Westerly.

Q. Easterly?

A. Yes, sir; you are right.

Q. At any rate it was an approach towards your premises?

A. Yes, sir.

Q. The change of grade then actually down on Ferry street is from Lamberton street toward your house?

A. Yes, sir; they diverted the course of the water which used to cross Lamberton street on the surface; now the water comes east and west, from east and west right to where I live.

Q. Ferry street is sloping, isn't it, from Broad street toward the river?

A. Yes, sir.

Q. And the grade is downward, or there is no grade; it is downward in front of your premises?

A. Yes, sir.

Q. And this change of grade on Lamberton, approaching the bridge, made such a change on Ferry street that there was a slight hill descending from Lamberton street towards your premises?

A. Yes, sir.

Q. And which, of course, would cause the surface water to accumulate in front of your premises?

A. Yes, sir.

Q. To carry off which there was a trunk across Lamberton?

34 A. Yes, sir.

Q. The iron pipe was laid before the dirt was thrown there?

A. Yes, sir.

Q. What portion of this work of which the change of grade in Ferry street is part, was done first, do you remember?

A. What is that?

(The stenographer being requested, read the previous question, as follows:) "What portion of this work of which the change of grade in Ferry street is part, was done first, do you remember?"

A. The change of the grade, I think, was commenced from the bridge downwards; I did not pay much attention to it at that time; not particularly what they were working at.

Q. At what stage of the work—the entire work now—did you remonstrate concerning the change to be made?

A. I remonstrated all along from the very beginning; I said that first.

Q. You include in that sort of remonstrance your appearance before common council?

A. Yes, sir; and that and subsequent with Mr. Bowles, and during the whole time when they commenced and put their pipe in there; I objected, too, when they commenced to raise the sidewalk; I objected worse by throwing water.

Q. They objected too in the shape of notice not to disturb any portion of your property?

A. My objection was till they compensate me for these damages.

Q. Were you in your premises when the water was thrown upon the workmen?

A. I was arrested, when I came back the water was throwing.

Q. Was there any water-throwing before you were arrested?

A. No, sir.

Q. Were you in and about the premises before you were arrested; inside I mean?

35 A. I know there was no water thrown before I was arrested.

Q. How do you know?

A. I was there; I would see it for I was there.

Q. Didn't you assist actively in the accumulation of water in the second floor?

A. If I did I wouldn't deny it, for I saw it thrown and I was satisfied to have it thrown, too.

Q. Didn't you ask or direct it to be thrown; didn't you know preparations were being made to throw it?

A. I did not; the water was so throwing when I came back; I never knew there was any contemplation of throwing water.

Q. Didn't you threaten them, saying water would be thrown if they attempted it?

A. I did not.

Q. Didn't you threaten bodily harm to the workmen if they attempted any change to the work?

A. I didn't attempt any bodily harm.

Q. Did you say you would use physical force?

A. I could not use much.

Q. Didn't you threaten to?

A. I don't say I didn't; I might; I do not know hardly.

Q. Did you at any time agree to take a certain sum of money in the way of damages or compensation for the change of grade?

(Objected to.)

By the COURT: He already has said that he told them that he would take $3,000.

By Mr. RELLSTAB: I think I have a right to go into that subject.

By the COURT: I do not think so if in the way of a compromise.

By Mr. RELLSTAB: The object of my question is not to bring out anything that would show a compromise.

A. The city of Trenton never offered me $1.

36 By Mr. LANNING: It is very evident, I submit, that whatever conversation may have been had with Mr. McQuade must have been by way of compromise, and could not have been anything else; in addition to that it would be dealing in matters relating to real estate which must be in writing.

By Mr. RELLSTAB: I do not think that is required; I do not know as it is material, but I think if we could show that an actual sum had been agreed upon between Mr. McQuade and the agents of the Pennsylvania railroad——

WITNESS: You can't show that.

By Mr. RELLSTAB: And acted upon the faith of such an agreement, the work so progressing that it would be material.

By the COURT: If you can show anything that amounts to a consent upon his part you may show that.

By Mr. LANNING: Then we will object to the question on the ground that it is not cross-examination, and the counsel must be bound by the answer.

By Mr. RELLSTAB: They have opened the subject of compensation in the demand by him for $3,000.

By the COURT: I should allow it upon the ground that the examination so far has proceeded upon the idea that he objected and resisted because there was no agreement whatsoever. The ground of his resistance was total want of arrangement between himself and the city or himself and the company. He objected all the time. If there is anything that shows a consent, whether by way of agreement for money or any other arrangement, anything that shows a consent upon the part of this witness, the defendant, to the company's proposal, that may be shown.

37 By Mr. RELLSTAB: You have testified that you know Mr. Bowles, engineer for the railroad company?

A. Yes, sir.

Q. Do you know Joseph R. Gilkyson?

A. I do.

Q. Did you have any conversation with him in reference to compensation paid to you?

A. For what?

Q. For the damage you may sustain; for where the grade is changed to now.

A. This particular change of grade?

Q. I mean this particular one.

A. I want to know what one.

Q. The change of grade contemplated by this ordinance and which raises a portion of the grade in front of your premises as it is now made.

A. We never had an agreement as it is now.

Q. Did you ever have any talk with him in reference to the amount you would be satisfied with?

A. With whom?

Q. Mr. Gilkyson.

A. No; not where it is now.

Q. Not where the grade is now; this grade as you speak of, it now is the only change of grade that has been made in front of your premises, is it not?

A. It is the only one, that is, now; they shortened it by resolution 21 feet.

Q. I do not know anything about that; when was this conversation, if you remember?

A. Never was any.

Q. Never was any?

A. Not where it is now.

Q. Did you never agree that that work should be done and that you would accept as compensation for all damages that you might sustain by reason thereof the sum of $250?

A. No, sir.

(Objected to on the ground that it partakes of the nature of a compromise, and on the ground that it is illegal under the statute of frauds, not being in writing.)

38 By the COURT: I will allow these questions upon the idea that he never went on and finished it.

Q. Did this work under this arrangement——

By Mr. LANNING: Do I understand the objection is overruled?

By the COURT: The objection is overruled.

By Mr. RELLSTAB: Did you ever agree with Mr. Gilkyson to accept $250 as your damages or compensation for any change of grade at or about your premises?

By Mr. LANNING: This question is objected to for the same reasons already given.

(Objection overruled.)

By the COURT: Let the witness answer.

Question repeated.

A. At the time I drove them off from where they came to put it in where it is now at the present time, I said it would bar my property of light and air, and if they would shorten the grade I would take less; I suppose they asked me what I wanted; they said it was hard to deal with me, and Mr. Bowles had to get Mr. Mitz and Mr. Crulp to come down to look at the place; I do not know whether Mr. Gilkyson was there at the time; I think he was and we agreed to shorten the grade 21 feet and they asked me what I wanted; I said I didn't know, I said I think $500 and they said Give him $300, and we talked along and I said All right, come ahead.

Q. Come ahead at what figure?

A. Something about that $200 or $300; I don't know what, in fact I disallowed it; they passed that night, I think, a resolution to shorten that grade 21 feet, and after that they commenced to take the pipes up and have them laid where I was across the street, and afterwards commence- to build an inlet at this grade; I went to

39 Mr. Bowles and I said, This of course is by resolution and not legal, if you put that in there you are destroying my view on this street by reason of it; I am advised that this inlet, the opinions of reputable physicians that lives in the neighborhood have told me, Dr. Mackenzie and Gallagher, told me it is unhealthy; it was put in about one-half on me and half on Mr. Goff; I said If you put that in there I will require as much as Mr.

Goff does, it was on both, or I will take $100 less than he will; he said Why do you ask that now; I said I do not want to be fighting all the time and you must not trouble and annoy us, and I said If you will agree to give me that I will allow you to go in there; he said he though- he would not do it; I said If you do not you can pay it in future time; I said You can pay us here for $3,000; he put it in the short grade at any rate; this was in 1891 when I am talking about.

Q. You are giving before the seventeenth of June?

A. About November; I think it was in 1891; on the thirtieth of April, 1892, I met Mr. Bowles and I asked him what he was going to do now about this, finishing up the street; What are you going to do, he said, about it, What are you going to do about it, I said; I said I am going to take it out if you do not pay for it; he said Don't touch it; this was the thirtieth of April, and I think on the fourth of May, a few days afterwards, I took it out from where it was put in by resolution, and it remained out until the seventh of May, when it was so shortened, and they put it back and extended the grade again.

By Mr. WOODRUFF: Didn't put it back in the same place?

A. Where they were originally put.

By Mr. RELLSTAB: Then it was not in reference to the change of grade authorized by the ordinance that you offered to take $250?

A. No, sir; it was only with a view of shortening the grade and bringing the commencement of the grade at the west end of the property.

Q. Where is it the present commences?

40 A. At the east end; that is right.

By Mr. WOODRUFF: And that would effect your property hardly any?

A. Hardly any, or very little, except the inlet and bad odor, and in the summer season particularly, when the water stagnates in what they call the check-basin.

Q. Shortened by resolution and not by ordinance?

A. Yes, sir.

By Mr. LANNING: By consent of counsel, we offer in evidence a couple of maps showing the grades of Ferry and Lamberton streets, in the immediate vicinity of this bridge and of Mr. McQuade's property. They are admitted without formal proof that they are copies of the city records, and are marked Exhibit M 1 and Exhibit M 2.

JOHN BROUGH, called by Mr. Lanning, after being duly sworn, testified as follows:

Examined by Mr. LANNING:

Q. Where do you live?

A. I live next door to Mr. McQuade, below him, on Ferry street; above him now.

Q. Do you know anything about the condition of the sidewalk in front of his house?

A. I know it was in a pretty bad condition for over a year.

Q. Do you remember the occasion when the sidewalk, bricks and flagging were taken up, on the original sidewalk?

A. I do, sir.

Q. Do you remember the occasion when the sidewalk was relaid on the sidewalk after the alteration of some of the grade?

A. As soon as they commenced—I am no man for law, so I walked away, and was away pretty much all the afternoon.

Q. Has the flagstone been relaid?

41 A. Yes, sir; the flagstone was relaid that day just as I came home at night.

Q. Since the grade has been changed, and since the bricks were originally taken up, have they ever been relaid?

A. No, sir; there has been no bricks relaid; there has been no bricks put down.

No cross-examination.

By Mr. RELLSTAB: I rely entirely upon your honor's opinion. I see no reason why there should be a change.

Conclusions.

(Filed March 26, 1895.)

Mr. R. S. Woodruff and Mr. W. M. Lanning for the complainant.

Mr. John Rellstab for the defendant.

On final hearing.

BIRD, *V. C.:*

The preliminary injunction in this case was advised, not because there was any question as to the legal rights of any of the parties in interest, but because those rights being conceded, the defendant thought proper instead of pursuing his legal remedies to recover compensation for the damages which he had sustained, or would sustain, by reason of the change of grade in the street and sidewalk, he persisted in taking the law in his own hands and bidding defiance to the city authorities. The city being liable to any of its citizens for damages sustained because of the want of repaired streets, and having undertaken to repair the streets according to the grade which had been prescribed as it lawfully might, and the de-

42 fendant with force and violence, interfering therewith and destroying such improvements or repairs from time to time, with repeated threats that he would continue such destruction, it appeared that such conditions were presented as justified the court in requiring him to desist from such destruction and interference. It seemed in such case as though the arm of the law would be wholly inefficient without the aid of equity. A single violent or illegal act may be corrected by an action at law, and so may a score, but when a multiplicity of illegal acts are threatened, it is to the interests of the public that equity should interfere in the beginning.

In this case it was not the duty of McQuade to make the change of grade, for the city had entered into an agreement with the company by which the company was to pay for all the expenses incurred in making such change. The city was proceeding to make such change. Consequently, McQuade was liable to no penalties, as his counsel has insisted, for lack of repairs or improvements in the street. It is plain, therefore, that the legal rights of McQuade could not be established by the city attempting to enforce any claim against him for want of repair of the streets or sidewalks adjacent to his premises. Such action or proceedings would not determine the damages which he had sustained or might sustain by reason of the change of grade.

Independently of the interference of the city authorities and what seems to be on their part the exercise of a legal right, the only question that can be litigated is the question between McQuade and the city with respect to the damages which he is entitled to. These damages he might have had ascertained before the company or the city took any steps whatever. But he allowed the company to go on and make all the changes necessary to the completion of the undertaking which had been consented to by the city, without taking direct proceedings to compel them to ascertain his damages and to compensate him therefor. But this inaction upon his part has not worked a forfeiture of his rights nor relieved the parties from
43 their liability. As was said when the preliminary injunction was advised, he has an ample remedy for a complete redress of all his grievances without interfering with the rights of the public at large, to the use of the street in front of his dwelling in a complete condition of repair. The cases referred to in the conclusions expressed when I granted the preliminary injunctions seems to me to sustain the views which have controlled me. See also Reed v. Camden, 24 Vroom, 322. I will advise that the injunction be made perpetual with costs.

Final Decree.

(Filed April 12, 1895.)

This cause coming on to be heard at the last regular term of the court of chancery, held at the state-house, in the city of Trenton, in the presence of John Rellstab, of counsel with the complainant, and Robert S. Woodruff and William M. Lanning, of counsel with the defendant, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the court having duly considered the said pleadings, proofs and arguments, and it appearing to the court that the complainant is entitled to the relief sought and prayed for by *him* in *his* bill of complaint, and that the preliminary injunction heretofore granted in this cause should be made perpetual: It is, on this ninth day of April, one thousand eight hundred and ninety-five, by Alexander T. McGill, chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said chancellor, by virtue of the power and authority of this court, doth hereby order, adjudge and

decree that the defendant be perpetually enjoined and ref-rained not only from further interfering with the laying and completion of the sidewalk and curbing mentioned in the bill of complaint but
44 also from in any manner removing, disturbing or interfering with the said pavement, sidewalk or curbing after the same shall have been completed, and that a writ of injunction issue accordingly.

And it is further ordered and decreed that the defendants pay to the complainant the costs of this suit to be taxed, and that execution issue therefor according to the practice of this court.

ALEX. T. McGILL, *C.*

Respectfully advised.

JOHN T. BIRD, *V. C.*

A true copy.

ALLAN McDERMOTT, *Clerk.*

Petition of Appeal.

New Jersey Court of Errors and Appeals.

JOHN McQUADE, Appellant, and THE INHABITANTS OF THE CITY OF TRENTON, Respondents.	On Appeal. Petition of Appeal.

To the honorable the court of errors and appeals in the last resort in all causes:

The petition of John McQuade, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the court of chancery by his honor Alexander T. McGill, chancellor of the State of New Jersey, bearing date the ninth day of April, in the year eighteen hun-
45 dred and ninety-five, in a cause wherein The Inhabitants of the City of Trenton were complainants and your petitioner, the said John McQuade, was defendant, in this respect, to wit: that the said decree adjudged that your petitioner, the said John McQuade, be perpetually enjoined and restrained not only from further interfering with the laying and completion of the sidewalk and curbing mentioned in the bill of complaint in this cause, but also from in any manner removing, disturbing or interfering with the said pavement, sidewalk or curbing after the same shall have been completed, and that a writ of injunction should issue accordingly. And your petitioner humbly appeals from the whole and every part of said final decree, which decrees as aforesaid upon the ground that the same is erroneous, in the following respects, to wit:

(1.) Because by said decree the complainants in said cause will be permitted to take the private property of your petitioner for public use, without compensation required to be made under the provisions of the constitution.

(2.) Because by said decree the Pennsylvania Railroad Company will be permitted to take the private property of your petitioner for

public use, without the compensation required to be made under the provisions of the constitution.

(3.) Because by the said decree the property of your petitioner will be damaged, without just compensation made for such damage to your petitioner.

(4.) Because the right to take or injure your petitioner's property in the manner set forth in the pleadings and proofs in this cause had not been acquired, either by the complainant, The Inhabitants of the City of Trenton, or by the Pennsylvania Railroad Company, by the exercise of the power of eminent domain or otherwise.

(5.) Because no procedure for taking or injuring your petitioner's property in the manner set forth in the pleadings and proofs in this cause has been at any time prescribed or enacted by the legislature.

(6.) Because the pleadings and proofs show that your petitioner's property is sought to be taken for public use by the Pennsylvania Railroad Company without just compensation first made to your petitioner.

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(7.) Because the pleadings and proofs show that the respondents are not without a remedy at law, and that the decree is but an attempt to enforce a city ordinance for which there is a legal remedy.

(8.) Because the said decree is in sundry other respects contrary to the Constitution of the United States and to the law of the land.

Your petitioner therefore prays that the said decree of the said chancellor may be in all respects reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

ROB'T S. WOODRUFF, JR.,
Solicitor and of Counsel with Appellant.

Filed April 25, 1895.

HENRY C. KELSEY, *Clerk.*

A true copy.

Answer to Petition of Appeal.

The answer of the above-named respondents to the petition of appeal of the above-named appellant.

These respondents, not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the ninth day of April last past, made and entered in the court of chancery as in said petition stated; but as to the substance and form thereof these respondents pray leave to refer thereto when the same shall be produced. And these respondents are advised and believe it to be true that said decree is agreeable to equity, and they pray that the same may be confirmed with costs to be adjudged to these respondents.

____ ____,
Solt. and Counsel with Defendants.

47 New Jersey Court of Errors & Appeals, November Term, 1895.

Between—

JOHN McQUADE, Appellant,
and
THE INHABITANTS OF THE CITY OF TRENTON, Respondents.
} On Appeal. Remittitur.

This cause having been brought to a hearing on an appeal from the court of chancery at the present term of this court, and William M. Lanning, Esq., and R. S. Woodruff, Jr., Esq., of counsel with the appellant, and John Reilstab, of counsel with the respondents, having been heard, and the questions brought up by said appeal having been duly considered, it is on this twenty-first day of November, A. D. eighteen hundred and ninety-five, ordered, adjudged, and decreed that the decree of the court of chancery, made on the ninth day of April, eighteen hundred and ninety-five, which is appealed from by the appellant, be, and the same is hereby, in all things affirmed, with costs in this court and in the court of chancery to be paid by the appellant, and that the petition of appeal be dismissed; and it is further ordered that the record be remitted to the court of chancery to proceed further thereon according to law and the practice of said court.

On motion of—

JOHN RELLSTAB,
Solicitor & Counsel of Respondents.

[Endorsed:] New Jersey court of errors and appeals, November term, 1895. Between John McQuade, appellant, and The Inhabitants of the City of Trenton, respondents. On appeal. Remittitur. John Rellstab, sol'r of respondents. "Filed Nov. 30, 1895, as of Nov. 21, 1895. Henry C. Kelsey, clerk."

48 STATE OF NEW JERSEY,

[Vignette.]

DEPARTMENT OF STATE.

I, George Wurts, secretary of state of the State of New Jersey and *ex officio* clerk of the court of errors and appeals in the last resort in all causes in and for the State of New Jersey, do hereby certify that the foregoing is a full, true, and complete copy of the record in the case of John McQuade, appellant, and The Inhabitants of the City of Trenton, respondents, on appeal from the court of chancery, and of the "petition of appeal," "answer to petition of appeal," and the "final decree and remittitur" of the said court and all proceedings in the cause, as the same remains on file and of record in my office.

Seal of the Secretary of the State of New Jersey.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court this the fifth day of June, A. D. 1897.

GEORGE WURTS,
Secretary of State and ex Officio Clerk of the Court of Errors and Appeals.

49 Know all men by these presents that we, John McQuade, of Trenton, New Jersey, as principal, and John Kelly and James West, both of Trenton, New Jersey, as sureties, are held and firmly bound unto The Inhabitants of the City of Trenton in the full and just sum of one thousand $\frac{0}{100}$ ($1,000) dollars, to be paid to the said The Inhabitants of the City of Trenton, its certain attorney, successors, legal representatives, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a term of the court of errors and appeals in the last resort in all causes of the State of New Jersey, in a suit depending in said court between John McQuade, appellant, and The Inhabitants of the City of Trenton, respondents, a judgment or decree was rendered against the said John McQuade, and the said John McQuade having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment or decree in the aforesaid suit, and a citation directed to the said The Inhabitants of the City of Trenton, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said John McQuade shall prosecute his writ to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN McQUADE. [SEAL.]
JOHN KELLY. [SEAL.]
JAMES WEST. [SEAL.]
JAMES WEST. [SEAL.]

Sealed and delivered in presence of—
JOHN DUNPHY.
JOHN DUNPHY.
JOHN DUNPHY.

Approved by—
GEORGE SHIRAS, JR.,
Assistant *Justice of the Supreme Court of the United States.*

50 I herewith acknowledge service of the within bond this fourteenth day of June, A. D. 1897.

WELLING G. SICKEL,
Mayor City of Trenton, N. J.

51 UNITED STATES OF AMERICA, *ss:*

To The Inhabitants of the City of Trenton, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of errors and appeals of the State of New Jersey, wherein John McQuade is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 22d day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

52 STATE OF NEW YORK, }
City & County of New York, } *ss:*

On this 7th day of June, in the year of our Lord one thousand eight hundred and ninety-seven, personally appeared Edward C. Wagner before me, the subscriber, a notary public, and makes oath that he delivered a true copy of the within citation to The Inhabitants of the City of Trenton by delivering the same to Welling G. Sickel, the mayor of the city of Trenton, New Jersey, at said city, on the third day of June, 1897.

EDWARD C. WAGNER.

Sworn to and subscribed the 7th day of June, A. D. 1897.

[Seal of John McClure, Notary Public, New York.]

JOHN McCLURE,
Notary Public, N. Y. Co.

Endorsed on cover: Case No. 16,612. New Jersey court of errors and appeals. Term No., 399. John McQuade, plaintiff in error, *vs.* The Inhabitants of the City of Trenton. Filed June 17th, 1897.